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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/647,857 | 08/26/2003 | Peter Mario Parker | | 4207 |
| 7590 | 10/05/2004 | | EXAMINER | |
| Peter Mario Parker 314 6th Avenue Baraboo, WI 53913 | | | NGUYEN, TUAN N | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3751 | |

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/647,857 | PARKER, PETER MARIO | |
| | Examiner | Art Unit | |
| | Tuan N. Nguyen | 3751 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 August 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Priority

1. Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-4 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility.

The flush valve, as claimed, is disclosed as a device for flushing a toilet by creating a siphon within the flexible tubing (7), which is threaded through a float (41). The examiner would like to point out that the siphon effect couldn't be created with both the inlet (35) and the outlet exiting the toilet tank being submerged under water as disclosed. The applicant indicates, in lines 10-20 of about page 4 of the specification, that the float (41) is pushed downward so that the flexible tubing (7) is substantially submerged beneath the water surface so that the tubing (7) is filled with water. It is well known that by submerging a tube in water without initial water flow is not enough to create a siphoning effect. Since both ends of the flexible tubing (7) is shown to be under water all the time, submerging it further into the water will not make a different

and can not create a siphoning effect. Therefore, such an important feature is required in detail so as to allow the valve to act as a flush valve.

Claims 1-4 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "a flush valve outlet fixture" in claim 1.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 1, it is unclear as to what structure is considered as "a flush valve outlet fixture."

With respect to claim 2, the terminology "nearly the same as" is an indefinite language because it raises the question of the mete and bound of the limitation being claimed.

With respect to claim 5, the terminology "nearly a right angle again" in line 2 and "and yet" in line 3 are indefinite languages because they raise the question of the mete and bound of the limitation being claimed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. As best understood, claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Stahlhut.

The Stahlhut reference discloses a flush valve comprising a flush valve outlet fixture and flexible tubing (12). A floatable device (3, 10) having two holes with a diameter nearly the same as the diameter of the flexible tubing that extend through the floatable device. The flexible tubing is connected at one end to the flush valve outlet fixture (see Fig. 1). The flexible tubing is threaded through one hole (bottom hole of tube 10) of the floatable device and threaded back through the second hole (bottom opening hole of member 3) of the floatable device. A flush handle (44) having an extension rod (4) that extends away from the flush handle and then bends at nearly a right angle at member (40) (see Fig. 4) again extending away from the flush handle and yet another bend angling away from the flush handle at member (42).

6. Applicant is referred to MPEP 714.02 and 608.01(0) responding to this Office action.

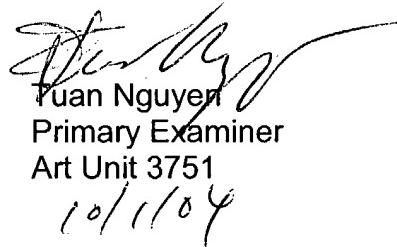
Art Unit: 3751

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Aaron discloses another flush valve with flexible tubing.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 703-306-9046. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Tuan Nguyen
Primary Examiner
Art Unit 3751
10/11/04

TN